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**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

DAVID MOORE,  
  
Plaintiff,  
  
v.  
  
GILEAD SCIENCES, INC.,  
  
Defendant.

Case No. CV 07-3850 SI

STIPULATION [AND [PROPOSED]  
ORDER] ON ELECTRONIC  
DISCOVERY

Judge: Honorable Susan Y. Illston

1. This stipulation ("Stipulation") [and proposed Order] on discovery of electronically stored information ("ESI"), pursuant to Federal Rule of Civil Procedure 26(f), shall govern various discovery issues in this litigation. The fact that the parties have agreed to

1 this Stipulation shall not constitute an acknowledgement that any information excluded from  
2 discovery by this Stipulation would (or would not) be discoverable in the absence of this  
3 Stipulation. Nothing in this Stipulation shall waive in whole or part any objection raised by a  
4 party in its written responses to specific discovery requests served in this action. Nor shall this  
5 Stipulation modify or supersede the terms of the parties' Agreed Protective Order to be  
6 submitted shortly.

7 2. Consistent with Federal Rule of Civil Procedure 34 and except as  
8 modified herein, the parties shall produce relevant, responsive and non-privileged ESI that is  
9 reasonably accessible and not unduly burdensome to locate and produce.

10 **Format of E-Discovery Production**

11 3. Subject to the limitations contained in Paragraphs 4 through 11 below, the  
12 parties agree to produce relevant, responsive and non-privileged ESI that is reasonably  
13 accessible regardless of their original format as black and white, single page Group IV TIFF  
14 files (along with Concordance .opt and .dat load files) or in searchable pdf format (along with  
15 Concordance .opt and .dat load files), multiple page documents should be produced as a single  
16 pdf. The parties agree that the production of relevant, responsive and non-privileged  
17 information shall take place on a rolling basis.

18 4. E-mails and other electronic documents produced in accord with  
19 Paragraph 2 shall be produced as they are kept in the usual course of business, and produced  
20 with the following information: (i) Extracted text or OCR sufficient to render them fully  
21 searchable. Extracted native text shall be produced in document-level .txt files where available.  
22 If no extractable text is available, machine OCR will be produced. The file name of the .txt file  
23 should match the starting bates designation for the document. (ii) the custodian from whom the  
24 documents were collected; (iii) for e-mails, the author, recipient(s), date the e-mail was sent or  
25 received, subject or header, and links to any relevant, responsive, non-privileged attachments.  
26 However, nothing herein shall require the parties to create or supply any information, metadata  
27 or otherwise, which is not maintained by the parties in the usual course of business.  
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1           5.       Emails and other electronic documents will be globally deduplicated  
2 across all custodians and sources. The first instance of an email family or electronic document  
3 encountered during pre-review processing will be included, with duplicate copies removed from  
4 subsequent review and production volumes. Emails and their attachments will be handled as a  
5 package or “family.” Email families will be deduplicated using the TO, FROM, CC, Subject,  
6 Sent Date, and Body fields in the message header. Electronic documents will be deduplicated  
7 using a MD5 hash algorithm. Duplicate email families and documents will be preserved and  
8 logged, but not reviewed and produced.

9           6.       No party shall be required to re-produce any documents produced or  
10 exchanged prior to the date of this Stipulation, including materials submitted prior to  
11 commencement of the instant lawsuit, or to “backfill” any information associated with such  
12 documents.

13                               **Limitations on E-Discovery**

14                               *Sources of ESI*

15           7.       The parties agree that, in the absence of a showing of particularized need,  
16 there is no obligation to preserve or produce information from the following sources:  
17 BlackBerrys or other similar portable devices; cell phones; and voicemails. In addition, the  
18 parties agree there is no need to preserve, access, review or produce materials from back-up  
19 tapes. The parties have met and conferred on these issues and have reached agreement based  
20 upon the representations and understandings reached in these conferences. The parties reserve  
21 all rights should new information become available.

22           8.       To the extent that a party knows or can reasonably ascertain that an active  
23 structured database, or a computer system or program that is no longer reasonably accessible  
24 (due to, for example, its de-activation or dismantling), is otherwise unduly burdensome to  
25 preserve and search, or whose contents would be primarily cumulative, contains information  
26 that would otherwise be discoverable, the party shall identify the structured database, computer  
27 system or program in lieu of producing such information, together with a description of the  
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1 discoverable information contained on it that is sufficient to permit the requesting party to  
2 assess whether it wishes to bear the cost of acquiring the information.

3           9. Each party bears its own costs of preserving, searching and producing  
4 ESI, except that a party demonstrating particularized need for information contained in any of  
5 the sources identified in Paragraphs 7 or 8 shall bear the cost of searching for and producing that  
6 information.

7                   *Relevant Custodians*

8           10. On or before January 7, 2010, the parties agree to exchange lists of the  
9 most likely custodians of relevant electronic materials, including a brief description of each  
10 person's title and responsibilities, as well as other pertinent information concerning whether the  
11 electronic documents associated with the custodians identified are of limited accessibility,  
12 including but not limited to documents created or used by electronic media no longer in use,  
13 maintained in redundant electronic storage media, or for which retrieval involves substantial  
14 cost. The parties agree to meet and confer within five business days thereafter in order to  
15 generate an agreed upon list of custodians whose electronic materials will be preserved and  
16 searched for purposes of the instant litigation. The parties agree to finalize said agreed upon list  
17 of custodians as well as the method of preservation, no later than January 21, 2010.

18                   *Search terms, time periods and other restrictions*

19           11. The parties agree to employ electronic searches and other limitations in  
20 order to locate relevant ESI and keep the burdens associated with electronic discovery within  
21 reasonable limits. On or before January 7, 2010, the parties shall exchange proposed "key  
22 word" searches and other limitations, including custodian or source locations to be searched,  
23 document type or time period, that will be used to locate, preserve and produce relevant  
24 electronically stored documents. The parties agree to meet and confer within fifteen business  
25 days thereafter in order to generate an agreed upon set of "key word" searches and other  
26 limitations to be applied to production of electronically stored documents. The parties agree to  
27 finalize said agreed upon "key word" searches and other limitations no later than January 28,  
28 2010.

**Retention**

12. Subject to the limitations contained in this Stipulation and proposed order, each party shall be responsible for taking steps in order to preserve the integrity of ESI that is identified as potentially relevant. To the extent relevant ESI has not been preserved or maintained properly, the party with knowledge of such circumstances must disclose such information, including the specific events that led to the failure to preserve or maintain relevant ESI, within five business days of learning of such failure.

\* \* \*

13. The Parties may execute this document in counterpart and by facsimile or other electronic means of transmission.

Dated: December 14, 2010

LAW OFFICES OF ROB HENNIG

COVINGTON & BURLING LLP

By: \_\_\_\_\_/S/\_\_\_\_\_

By: \_\_\_\_\_/S/\_\_\_\_\_

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/s/            
Richard A. Jones

  
The Hon. Susan Y. Illston  
United States District Judge for the  
Northern District of California

Stipulation [and [Proposed] Order] on Electronic Discovery 6  
(Case No. CV 07-3850 SI)